

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

In re:

FREE SPEECH SYSTEMS, LLC,

Debtor.

) Case No. 22- 60043

) Chapter 11 (Subchapter V)

**DEBTOR'S EMERGENCY MOTION FOR AN ORDER MODIFYING THE AUTOMATIC
STAY TO ALLOW THE HESLINS/LEWIS STATE COURT SUIT TO CONTINUE TO
JUDGEMENT**

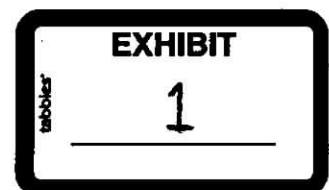
THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

EMERGENCY RELIEF HAS BEEN REQUESTED, IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER, IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

RELIEF IS REQUESTED NOT LATER THAN 8:00 A.M. ON AUGUST 1, 2022.

The above-captioned debtor and debtor-in-possession (the "Debtor" or "FSS"), in the above-referenced chapter 11 case (the "Chapter 11 Case"), hereby files this emergency motion (the "Motion") seeking an order from the Court lifting the automatic stay provision of the Bankruptcy Code to authorize the consolidated state court action styled as *Neil Heslin and Scarlett Lewis v. Alex E. Jones*



and Free Speech Systems, LLC, Cause No. D-1-GN-18-001835, in the 261st District Court of Travis County, Texas (the “Heslin/Lewis Suit”) to continue trial to judgment before Judge Maya Guerra Gamble, 459th Civil District Court, Travis County (the “Texas State Court”). In support of the Motion, the Debtor submits and incorporates by reference the *Declaration of Marc Schwartz in Support of First Day Motions* (the “First Day Declaration”), filed concurrently herewith. In further support of the Motion, the Debtor respectfully represents as follows:

REQUEST FOR EMERGENCY HEARING OR EX PARTE RELIEF

1. The Debtor seeks emergency consideration of this Motion on or before 8:30 a.m. on August 1, 2022, or as soon thereafter as the Court’s schedule will allow. A jury has been empaneled and trial is underway in the Heslin/Lewis Suit, scheduled to continue at 9:00 a.m. on Monday, August 1, 2022. Emergency relief is necessary to prevent delay in the Heslin/Lewis Suit to the detriment of the Debtor, Plaintiffs Heslin and Lewis, and the members of the jury serving in the Heslin/Lewis Suit.

2. The Debtor further submits that *ex parte* relief pursuant to Rule 4001(a)(2) is appropriate here. The First Day Declaration show the potential for harm if the automatic stay is not granted and this motion is verified by counsel to the Debtor pursuant to Bankruptcy Local Rule 9013-1(i). Notice is not necessary here because the relief sought does not affect the rights of any parties in interest other than the Debtor.

JURISDICTION AND VENUE

3. On July 29, 2022 (the “Petition Date”), the Debtor commenced the above captioned case by filing a voluntary petition for relief under Subchapter V of Chapter 11 of Title 11 of the United States Code §§ 101, *et seq.* (the “Bankruptcy Code”).

4. The Debtor continues in the possession of its property and is operating and managing its businesses as a debtor and debtor-in-possession pursuant to Section 1182(2) of the Bankruptcy Code.

5. No request for a trustee or examiner has been made. No statutory committee of creditors has been appointed.

6. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion are proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

7. The statutory bases for the relief sought in this Motion are 11 U.S.C. §§ 105, 362 and Rule 4001(b) of the Federal Rules of Bankruptcy Procedure.

BACKGROUND¹

8. In 2018, certain aggrieved parties (the “Texas Plaintiffs”) commenced state-court actions against one or more of the Debtors styled as: **(a)** *Neil Heslin v. Alex E. Jones, Infowars, LLC, Free Speech Systems, LLC, and Owen Shroyer*, Cause No. D-1-GN-18-001835, in the 261st District Court of Travis County, Texas; **(b)** *Scarlett Lewis v. Alex E. Jones, Infowars, LLC, Free Speech Systems, LLC*, Cause No. D-1-GN-18-006623, in the 53rd District Court for Travis County, Texas; **(c)** *Leonard Pozner and Veronique De La Rosa v. Alex E. Jones, Infowars, LLC, Free Speech Systems, LLC*, Cause No. D-1-GN-18-001842, in the 345th District Court of Travis County, Texas; **(d)** *Marcel Fontaine v. Alex E. Jones, Infowars, LLC, Free Speech Systems, LLC, and Kit Daniels*, Cause No. D-1-GN-18-001605 in the 459th District Court for Travis County, Texas; and **(e)** *Neil Heslin, Scarlett Lewis, Leonard Pozner, Veronique De La Rosa, Marcel Fontaine v. Alex E. Jones, Infowars, LLC, Free Speech Systems, LLC, PQPR Holdings Limited LLC, JLJR Holdings, LLC, PLJR Holdings,*

¹ Additional factual background and information regarding the Debtor and the litigation it has faced prior to the Petition ~~Date is~~ Date is set forth in the Declaration of W. Marc Schwartz in Support of Voluntary Petition and First Day Motions.

LLC, Carol Jones, David Jones, PQPR Holdings, LLC, JLJR Holdings Limited, LLC, AEJ Holdings, LLC, AEJ Trust 2018, Cause No. D-1-GN-22-001610, in the 200th District Court for Travis County (collectively, as may have been consolidated, the “Texas State Court Suits”).

9. Two of the Texas State Court Suits—*Neil Heslin v. Alex E. Jones, Infowars, LLC, Free Speech Systems, LLC, and Owen Shroyer*, Cause No. D-1-GN-18-001835, in the 261st District Court of Travis County, Texas and *Scarlett Lewis v. Alex E. Jones, Infowars, LLC, Free Speech Systems, LLC*, Cause No. D-1-GN-18-006623, in the 53rd District Court for Travis County, Texas—have been consolidated as the Heslin/Lewis Suit. Judge Maya Guerra Gamble, 459th Civil District Court, Travis County (the “Texas State Court”) is presiding over the Heslin/Lewis Suit.

10. The trial of the Heslin/Lewis Suit was ongoing as of the Petition Date. On July 25, 2022, the Texas State Court held *voir dire* of jurors and a jury was empaneled. The Texas State Court began taking evidence in the Heslin/Lewis Suit on July 26, 2022. As the result of the filing of the Debtor’s petition for chapter 11 relief, the Heslin/Lewis Suit is stayed by Bankruptcy Code section 362.

11. The Debtor believes that it is in the best interests of its estate and creditors for the Heslin/Lewis Suit to continue to judgement notwithstanding the commencement of this Chapter 11 Case. Substantial resources of the Debtor and Plaintiffs Heslin and Lewis have already been expended in the Heslin/Lewis Suit to empanel a jury and present evidence to that jury. Based on representations made by counsel for Heslin and Lewis in the chapter 11 case of related party InfoW, LLC previously before this Court, the Debtor believes that Heslin and Lewis desire a final judgment from the Texas State Court and would seek relief from the automatic stay absent this request by the Debtor.²

² Cliff Walston, attorney for the Texas Plaintiffs, indicated at the April 22, 2022, hearing in the InfoW, LLC chapter 11 case that the Texas Plaintiffs would be seeking relief from the automatic stay to continue litigation. According to Mr. Walston, the “cases are every bit as much about having a determination final made for them, them having their day in court in which Mr. Jones is held accountable for his conduct. So it’s not just about a liquidating claims procedure, it is very emotional.” *In re InfoW, LLC*, Case No. 22-60020 (Bankr. S.D. Tex.) [ECF No. 39] at 73:8-12.

RELIEF REQUESTED

12. Pursuant to section 362(d) of the Bankruptcy Code, the Debtor seeks an order modifying the automatic stay to permit the Heslin/Lewis Suit to continue to final judgment, but that all further proceedings remain subject to the automatic stay.

ARGUMENT

13. Bankruptcy Code section 362(d) sets forth the general standard for obtaining relief from the automatic stay. This provision provides, “on request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section such as by terminating, annulling, modifying, or conditioning of such stay . . . for cause . . .” 11 U.S.C. § 362(d)(1). The Bankruptcy Code does not define “cause” and courts must determine when relief from the automatic stay is appropriate on a case-by-case basis.

14. Generally, relief from the automatic stay should be granted to liquidate an unsecured claim only where the “balance of hardships” favors of determining the claim in the creditor’s preferred forum. *See In re UTEX Communs. Corp.*, 457 B.R. 549, 570 (Bankr. W.D. Tex. 2011) (quoting *In re U.S. Brass Corp.*, 173 B.R. 1000 (Bankr. E.D. Tex. 1994); *see also In re Kao*, No. 15-31193-H3-13, 2015 Bankr. LEXIS 4293, at *6 (Bankr. S.D. Tex. Dec. 21, 2015); *In re Young*, No. 06-80397-G3-7, 2006 Bankr. LEXIS 2934, at *6 (Bankr. S.D. Tex. Oct. 20, 2006).

15. Modifying the automatic stay to allow the Heslin/Lewis Suit to continue to final judgment, but no further, is appropriate here. A jury has been empaneled, the trial has commenced, and the Debtor and Plaintiffs Heslin and Lewis have participated in the trial. In light of these factors, liquidating the claims of Plaintiffs Heslin and Lewis against the Debtor through the state-court trial in the Heslin/Lewis Suit will harm neither the estate, Plaintiffs Heslin and Lewis, nor other creditors.

RESERVATION OF RIGHTS

16. The Debtor reserves any and all rights in connection with the Heslin\Lewis Suit. Nothing contained herein shall operate as a waiver of any of the Debtor's claims, rights or remedies.

NO PRIOR REQUEST

17. No previous request for the relief sought herein has been made to this Bankruptcy Court or any other court.

CONCLUSION

WHEREFORE, the Debtor FSS requests that the Bankruptcy Court: (a) enter an order, in substantially the form attached hereto, modifying the automatic stay to permit the Heslin\Lewis Suit to continue to final judgment, and (b) grant such other and further relief as is just and proper.

Respectfully submitted this 29th day of July, 2022.

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Proposed Counsel to the Debtor and Debtor-In-Possession

-and-

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*Proposed Co-Counsel to the Debtor
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CERTIFICATE OF ACCURACY

I hereby certify that the forgoing statements are true and accurate to the best of my knowledge and belief. This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Kyung S. Lee

CERTIFICATE OF SERVICE

I hereby certify that on the date of filing, a true and correct copy of the foregoing document was served by (a) the Court's CM/ECF system on all parties registered to receive such service, (b) by U.S.P.S. first class mail on all parties indicated in the attached service list, and (c) the following parties by email:

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/s/ Raymond W. Battaglia

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Twenty Largest Unsecured Creditors

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Edgecast, Inc
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St. Louis, MO 63195-3604

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c/o Rapid Medical
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c/o Ickonic Enterprises Limited
St. Helen's House King Street
Derby DE1 3EE
United Kingdom

WWCR
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Nashville, TN 37218-3800

JW JIB Productions, LLC
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Riviera Beach, FL 33404

CustomTattoNow.com
16107 Kensington Dr. #172
Sugar Land, TX 77479

AT&T
PO Box 5001
Carol Stream, IL 60197-5001

Justin Lair
1313 Lookout Ave
Klamath Falls, OR 97601

Parties Claiming Interest or Lien Affected

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c/o Stephen Lemmon
1801 S. Mopac Expressway
Suite 320
Austin, TX 78746

Parties Filing Notice of Appearance

N/A

Subchapter V Trustee

N/A (Not Yet Appointed)

U.S. Trustee

Office of the U.S. Trustee
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Houston, TX 77002

Additional Notice Parties

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

In re:)	Case No. 22- <u>60043</u>
FREE SPEECH SYSTEMS, LLC,)	Chapter 11 (Subchapter V)
Debtor.)	

**ORDER MODIFYING AUTOMATIC STAY TO ALLOW HESLIN/LEWIS TRIAL TO
CONTINUE TO FINAL JUDGMENT**

At Victoria, in said District, came on for consideration the Emergency Motion to Lift Automatic Stay in Favor of Neil Heslin and Scarlett Lewis to Continue Trial to Judgment (the “Motion”) filed by Free Speech Systems, LLC (the “Debtor” or “FSS”); and it appearing to the Court that notice of the hearing on the Motion is adequate, appropriate and sufficient under the circumstances of this case; and it further appearing to the Court that prior to the Petition Date, Neil Heslin and Scarlett Lewis (collectively, the “Plaintiffs”) commenced state-court actions against FSS consolidated into the action styled as *Neil Heslin v. Alex E. Jones and Free Speech Systems, LLC*, Cause No. D-1-GN-18-001835, in the 261st District Court of Travis County, Texas (“Heslin/Lewis State Court Litigation”); and it appearing to the Court that a trial in the Heslin/Lewis Litigation is ongoing before Judge Maya Guerra Gamble, 459th Civil District Court, Travis County (the “Texas State Court”); and it appearing that on July 29, 2022 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) with the United States Bankruptcy Court for the Southern District of Texas, Victoria Division (the “Bankruptcy Court”); and the automatic stay provision of 11 U.S.C. § 362(a) may prevent the continuation of the Heslin/Lewis State Court Litigation; and the Debtor having agreed to the modification of the automatic stay so as to permit the Texas State Court to proceed

up to and including the entry of judgment, if any, in the Heslin/Lewis State Court Litigation and the Plaintiffs to litigate the matter to judgment;;

NOW, THEREFORE, IT IS ORDERED THAT:

1. The automatic stay provision of 11 U.S.C. § 362(a) be and hereby is modified solely for the purpose of allowing the Heslin/Lewis State Court Litigation to continue to proceed to judgment by the Texas State Court.

2. Except to assert the claim against FSS in FSS's bankruptcy case, the automatic stay shall continue to enjoin the Plaintiffs and any other party, from exercising against FSS any remedies to collect or enforce any judgment against any assets of FSS or its bankruptcy estate including all property of the estate.

3. This Court shall retain sole and exclusive jurisdiction with respect to the automatic stay and its application to any actions other than those expressly provided for in this Order.

Dated: _____, 2022

UNITED STATES BANKRUPTCY JUDGE